

REMARKS

Claims 2-11 and 13-23 are pending in this application. Claims 24-27 have been canceled by a previous amendment. Allowance of the application is respectfully requested.

CLAIM REJECTION UNDER 35 U.S.C. 112, FIRST PARAGRAPH

The Examiner has rejected claims 2-11 and 13-23 under §112, first paragraph as failing to comply with the enablement requirement. Applicants respectfully traverse this rejection.

First Applicants note the unusual procedural posture of this case. This application has received multiple office actions – none of which included a Section 112, first paragraph rejection. Instead, the Patent Office has repeatedly indicated that, for example, independent claims 2 and 3 are allowable; and the Office Action dated May 21, 2005 indicated that claims 2-11 and 13-23 were allowable.

In this Section 112, first paragraph, rejection, the Examiner alleges the specification fails to disclose to a person skilled in the art how to make and/or use the invention. The Examiner, in making this rejection, is arguing that the claims recite a breadth of invention that is unsupported by the disclosure. Applicants respectfully submit that such a rejection is untenable. The present invention does not fall in an unpredictable art, such as many of the chemical arts, wherein this rejection may at least be plausible. The body of case law dealing with enablement rejections based on undue breadth of the claims clearly recognizes that such rejections are pertinent to unpredictable arts, but find little applicability in predictable arts (e.g., mechanical and electrical arts). See *Spectra-Physics, Inc. v. Coherent, Inc.*, 827 F.2d 1524, 3 USPQ2d 1737 at 1743 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 954 (1987). Furthermore, the court in *United States Steel Corp. v. Philips Petroleum Co.*, 865 F.2d 1247, 9 USPQ2d 1461 at 1464-1465 (Fed. Cir. 1989) has

noted that "overbreadth" alone has been discredited as basis for determining sufficiency of a specification. Instead, the court stated that "support need be found for only the claimed invention, in view of how one skilled in the art would construe the claims and would read its specification."

The Examiner specifically alleges on pages 3-4 of the present Office Action that the present invention requires three load estimating methods, and "nowhere in the disclosure [does it imply] that any method can stand alone as the sole means for calculating the load level recursively to control call admission."

This statement is simply untrue and incorrect. Page 3, lines 18-22 of the originally filed application state:

The present invention is a system and a method for controlling call admission in a wireless communications network which estimates load levels as a function of changes in base station receive power and/or changes in the number of mobiles served in the cell/sector (hereinafter "number of users").

Page 5, lines 20-23 of the original filled application state:

The present invention is a system and method for controlling call admission in a wireless communications network which estimates load levels as a function of changes in base station receive power and/or the number of users.

Also, the claims of the originally filed application do form part of the original disclosure and inform on the breadth and scope of the invention as contemplated by the inventor at the time of filing. Originally filed claim 1 recited:

1. A method of controlling call admission in a communications network, comprising:
 - calculating a load level as a function of at least one of a change in power measurements or a change in number of users values; and
 - controlling call admission based on the calculated load level.

Originally filed claim 12 stated:

12. A system of controlling call admissions in a communications network, comprising:
load calculating means for calculating a load level as a function of at least one of a change in power measurements or a change in number of users values;
and
control means for controlling call admission based on the calculated load level.

The evidence is undeniable that Applicant intended to cover, as their invention, a method or system that was NOT restricted to the correlation or combination of several load calculating methods.

The Applicants enabled each discrete method by providing equations (4), (5) and (7). Each is a different method for estimating load, and as evident from equations (4), (5) and (7) – none of these methods requires correlation to or association with the other.

The Examiner also appears to be making erroneous interpretations regarding pre-requisites. Is the Examiner suggesting that one skilled in the art would not understand that calculating a load level as a function of at least one of a difference between a current measured power and a previous measured power and a difference between a current number of users and a previous number of users as recited in, for example, claim 2 uses old and new current measured powers and/or uses old and new numbers of users? This aspect of the Examiner's rejection is simply not understood.

For at least the reasons given above, the Applicants request withdraw of the Examiner's §112, first paragraph rejection. If the Examiner would like to discuss aspects of this rejection in more detail, he is urged to contact the undersigned.

CONCLUSION

Accordingly, in view of the above remarks, reconsideration of the rejection and allowance of each of claims 2-11 and 13-23 in connection with the present application is earnestly solicited.

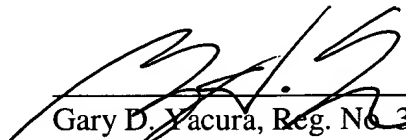
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary Yacura at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



Gary D. Yacura, Reg. No. 35,416
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

GDY:jcp